

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS

March 25, 2011

A meeting of the Commission for Human Rights was held in the agency conference room on Friday, February 25, 2011. Present at the meeting were Commissioners Alton W. Wiley, Jr., Camille Vella-Wilkinson and Rochelle Bates Lee. Absent were Alberto Aponte Cardona, Iraida Williams, Dr. Susa and Nancy Kolman Ventrone. Commissioner Wiley called the meeting to order at 1:10 p.m.

A motion was made by Commissioner Lee to approve the minutes of February 25, 2011. The motion to approve was seconded by Commissioner Vella-Wilkinson and carried.

Status Report: Michael D. Évora, Executive Director

A written report was handed out. All new information is in bold print. The Director reported that the Commission and HUD will be co-sponsoring a Fair Housing event on April 15, 2011. The event will be held at Providence City Hall, Room 302 with the Assistant Secretary of HUD, John Trasvina.

Case Production Report – Attached

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: Cynthia Hiatt reported that the letters requesting reappointment of Commissioners Susa, Wiley and Lee have gone out. No action has been taken yet and Michael Will send a follow-up letter.

Commissioner Meeting -2- March 25, 2011

OUTREACH: Commissioner Vella-Wilkinson reported that she continues to work with RI Affirmative Action Professionals (RIAAP).

Commissioner Vella-Wilkinson and RIAAP help put together a Women's History month event.

Commissioner Vella-Wilkinson spoke to Tina Christy with regards to working with her on a sexual harassment education/outreach to be

presented in October 2011, commemorating the 20th anniversary of the Clarence Thomas/Anita Hill controversy.

Commissioner Lee worked with Pathways for High School kids to get them ready for the job market.

STATUS REPORT - LEGAL COUNSEL by Francis Gaschen and Cynthia Hiatt

LITIGATION: Report Attached. New information is in bold.

LEGISLATION: Proposed Legislation. The Commissioners discussed whether to support proposed legislation presented by Ms. Sapphire Jule King. The Commissioners decided that they will make a final decision at a later date once more work is done on the proposal.

REGULATIONS: No report at this time.

HEARING SCHEDULE: Discussed

Commissioner Meeting -3- March 25, 2011

DECISIONS: No discussion at this time.

The meeting adjourned at 2:30 p.m. The next regular meeting will be March 25, 2011 at 12:30 P.M.

Respectfully Submitted,

**Michael D. Évora
Executive Director**

**Notes taken by: B. Ross
EXECUTIVE DIRECTOR'S
REPORT TO COMMISSIONERS
25 March 2011**

I. BUDGET

S = State/General Revenue; F = Federal (EEOC/HUD); T = Total

	FY 2011 (Passed)	FY 2011 (Rev.Req.)	FY 2012 (Request)	FY 2011 (House Rev.)	FY 2012 (House Bill)
S	1,016,877	1,264,214	1,204,098	1,222,547	1,154,038
F	356,689	164,367	301,532	164,367	301,532
T	1,373,566	1,428,581	1,505,630	1,386,914	1,455,570

The Commission's Revised FY 11 and Proposed FY 12 budget requests were submitted to the Governor on October 13. For FY 11, the State Budget Officer has requested a submission realizing a 1.33% reduction in General Revenue. For FY 12, he has requested a submission realizing a 15% reduction in General Revenue (in 5% increments) to "provide the future Governor with some flexibility on choosing cuts". Subsequent to the submission of the budget requests, Robert Bromley, Senior Legislative Fiscal Analyst for the RI Senate, inquired as to the status of the Commission's current lease and its ability to relocate to a state-owned facility. H-5894, the House Budget Bill, authorizes 14.5 FTEs for the Commission for FY 11 and FY 12. We await word on our annual hearing before House Finance.

II. FEDERAL CONTRACTS

EEOC – For federal FY 2011 (beginning October 1, 2010), according to

EEOC Project Director Marlene Toribio, we have closed 91 co-filed cases (as of February 28, 2011). Our EEOC contract for the fiscal year is as of yet unknown.

HUD – For FY 10, according to HUD Project Director Angela Lovegrove, we took in 47 new housing charges, 41 of which were co-filed with HUD. Within this same time period, we processed 48 housing charges, 41 of which were co-filed with HUD.

For FY 11, we have taken in 34 new housing charges, 33 of which are co-filed with HUD. Within this same time period, we have processed 36 housing charges, 34 of which were co-filed with HUD.

III. PERSONNEL

Susan Pracht, Investigator, resigned from her position (effective 2/9/11)). She has chosen to pursue a one- to two-year position as a Volunteer with the Brethren Volunteer Service (BVS). BVS is an international organization analogous to the Peace Corps. On 2/14/11, I submitted a Personnel Action Request Form to request authorization from Personnel to fill this critical position. I have received indication from the Budget Office that our request is likely to be approved.

IV. OUTREACH – Refer to attached report

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production.

●Case Closures – Refer to attached report.

We ended FY 2010 behind the prior fiscal year's case processing rate.

For FY 09, we processed 444 cases; for FY 2010, we processed 402 cases (approx. 10.5% reduction). For the eight-month period from July 2010 through February 2011, the Commission has processed 265 cases (compare to 260 cases processed in this same time period last year).

●Aged Cases – Refer to attached report.

●Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of FY 98. We ended FY 10 with 325 cases in inventory. As of 3/10/11, we had a total of 347 cases in inventory; 55 of those cases were pending assignment.

●Annual Report – The FY 2010 Annual Reports arrived this morning. Copies will be mailed to designated recipients some time next week.

●Computers – I had reported at last month's Commission meeting that the Commission was in need of a new router to improve

internet access, which affects everything from our state email accounts to legal research to interactions with EEOC and HUD through IMS and TEAPOTS. At that meeting, Frank suggested that I contact EEOC and HUD to inquire about the availability of grant money to purchase the router (estimated cost: \$6000.00). I am happy to report that, upon receiving my inquiry regarding available funds, HUD informed me that our next contract would include an additional \$6000.00 for the purchase. The recent HUD contract, received and signed by me on September 7, included the \$6000.00 for a new router.

Jay has obtained a formal quote from the State IT department of \$6,193.95 for a new router/hub; this price includes installation. The Commission submitted a purchase order and critical need justification form for Budget Office approval on December 9. Reportedly, Verizon is experiencing delays in filling state purchase orders due to layoffs in December and January. As of the present date, the router still has not been received. It is likely that the Commission will cancel its purchase order and seek approval to order the router from another vendor.

Respectfully submitted,

Michael D. Évora

Executive Director

Attachments

To: Commissioners

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: March 25, 2011

Recent developments are in bold.

Aquidneck Island v. RICHR, et al.

This suit was brought by the plaintiff against multiple parties, alleging that liens have been placed on its property improperly. All liens were against Norman Cardinale not Aquidneck. Case is moot now. An offer of \$2500 was made by counsel to the plaintiff to settle all of the claims against Cardinale and his companies. The offer was not satisfactory.

Babbitt v. Crescent Park Manor, et al.

The Commission intervened as a party plaintiff in this case. A discovery deposition was held. Defendants' Motion for Summary Judgment was denied. The case has been transferred to Judge Stern before whom the matter will be heard, probably in May.

Bagnall v. RICHR and WLWC et al.

The complainant appealed the Commission Decision and Order. The Commission filed the administrative record on April 12, 2006. On April 22, 2008, the complainant's attorney filed his brief. The Commission's Brief was filed on August 27, 2008. The Commission received the respondent's brief on December 5, 2008. In November, 2010, the complainant filed a stipulation to assign the appeal for a

written decision by the Superior Court. The appeal was assigned to Justice Netti Vogel.

BHDDH (MHRH) v. RICHR and the Estate of Dr. John Satti

BHDDH appealed the Commission decision that BHDDH retaliated against Dr. Satti and discriminated against him on the basis of his age. BHDDH filed its Brief on August 7, 2008. On October 21, 2008, the Commission filed the administrative record. On January 14, 2009, the Commission filed its brief. The complainant's brief is pending; the complainant's attorney has indicated that she is working on it.

Ezersky v. Rite-Way Forms, Inc.

On October 8, 2009, the complainant filed a petition to enforce the Commission Order. The petition was granted on October 23, 2009. The complainant's attorney has consulted with Attorney Gaschen. She is working with a collections attorney.

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. In November, 2007, Judge Savage remanded the Commission Decision for the Commission to determine how the Commission would evaluate the evidence, given the conclusions reached in her decision. Judge Savage also asked the Commission to re-assess its Order. After numerous efforts to reach a resolution between the parties, and submissions by the parties in the winter and spring of 2009, the case was taken under consideration by the Commission. A decision in the

case issued on March 12, 2010. On April 14, 2010, the respondents appealed. The administrative record was filed in early July, 2010. Justice Gale assigned the new appeal to Justice Savage, in accordance with her order on the previous appeal. The Town filed its brief on February 18, 2011. The briefs of the Commission and the Gaffneys are due April 21.

J.J. Gregory and Sons v. RICHR and Brenda Zeigler

The Commission found that J.J. Gregory and Sons discriminated against Brenda Zeigler because of her sex. J.J. Gregory and Sons filed an appeal. Its appeal was amended to include an appeal of the Commission's Decision on Damages and Attorney's Fees. The Commission filed the record on February 14, 2008. Respondent filed its brief on January 5, 2009. The complainant filed her brief on January 29, 2009. The Commission filed its brief on February 9, 2009.

On February 10, 2009, the appeal was assigned to Judge Judith Savage for decision. On March 10, 2011, Justice Savage issued a decision upholding the Commission's finding of discrimination. The complainant's attorney has drafted an Order for Justice Savage. He may file a motion for supplemental attorney's fees with the Commission.

Laboy v. Stat Health Services, et al.

Counsel is trying to locate respondent's officers to bring a suit to enforce the Commission Decision. Corporate charter revoked and the individual defendant cannot be located.

Manfredi v. Donna Conway, et al.

The respondents appealed the Commission Decision denying the respondent's motion to dismiss on the grounds of qualified immunity.

Cross-appeal filed by the Civil Prosecutor relating to the Commission's consideration of reconsideration.

RICHR (Lovegrove) v. Escolastico

A Rhode Island judgment was obtained and sent to a Florida lawyer for collection. Counsel is waiting for Ms. Lovegrove to forward funds to the Florida counsel to begin Supplementary Proceedings against Mr. Escolastico.

RICHR (Manfredi) v. Donna Conway, et al.

The Commission filed a complaint in Superior Court alleging violation of Manfredi's rights under the Fair Housing Act. Conway has been served.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of real estate in violation of the Uniform Fraudulent Transfers Act was filed against Norman Cardinale, et al. Motions for Entry of Default were granted. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.

RICHR (Martin) v. Cardinale, et al.

A complaint alleging a transfer of partnership interests in real estate in violation of the Uniform Fraudulent Transfers Act has been filed against defendants. Motions to compel will be filed. An offer of \$2500 was made to the plaintiff to settle all of the claims against Cardinale. The offer was not satisfactory.

RICHR (Morin) v. Teofilo Silva, et al.

A complaint for enforcement was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR (Robinson) v. Geruso, Flagship Management, et al.

After a finding of probable cause, a complaint against six defendants was filed in Superior Court alleging racial discrimination in a failure to rent case. The case was settled and HUD notified. RICHR will monitor the case for three years. The first report, due March 19, 2010, was received. A letter requesting the report for this year will be sent.

RICHR (Wright) v. New Canonchet Cliffs, et al.

The Commission found probable cause and the respondents elected in this housing case that alleges failure to give a reasonable accommodation regarding a support animal (the respondents claimed that the dog was too big for a pet). Suit was filed in Washington County Superior Court. Discovery will commence shortly.

RICHR (Switzer) v. Principe and TEN SEVENTY EIGHT MAIN

The Commission found probable cause and the respondents elected

in this housing case that alleges familial status discrimination. Judgment was entered against both defendants. Two parcels of property were levied upon. Discussions with defense counsel to settle stopped. New counsel has filed a motion to remove the default and is discussing settlement. The motion was continued to April 13th and will be going forward.

RICHR v. Shear Pleasure

This case was filed in the Providence County Superior Court to enforce a negotiated settlement and the defendant was defaulted. Execution was returned unserved as sheriff could not locate the officer of the defendant.

RICHR (Zeigler) v. Laura Sitrin, Finance Dir. of Newport

The case is resolved. The Commission must annually monitor City training. Training was completed for 2009. I am sending a letter requesting training for this year.

STAUB v. PROCTOR HOSPITAL (U.S. Supreme Court March 1, 2011)

While this is not a case of discrimination covered by the Commission, the principles should be applicable to anti-discrimination law in general. Federal law bars discrimination on the basis of military status. The plaintiff alleged that his supervisors were unhappy with his National Guard service and devised bad disciplinary reports against him because of his service. An upper-level supervisor who had no dislike of military service terminated plaintiff's employment.

The U.S. Supreme Court held that the plaintiff had a valid cause of action based on the military service animus of his immediate supervisors. Their discrimination based on military service influenced the decision of the upper-level supervisor and therefore a violation could be found. This case allows a “cat’s paw” theory of discrimination – if someone who has a discriminatory motivation takes action which influences the ultimate decision-maker to take adverse action, it is discrimination.

Subpoena

A plaintiff in one case has subpoenaed charges in other Commission cases filed against the same defendants. Defendants’ counsel has indicated that he plans to file a motion to quash. Commission Counsel has contacted the lawyers representing the parties in the two cases against the same defendants and informed them that the Commission plans to comply with the subpoena. The respondent’s attorney and the attorney for the respondents in the other cases all decided that they had no objection to production and the charges were produced in compliance with the subpoena.

Subpoena2

A plaintiff suing two defendants in one case has subpoenaed charges in other Commission cases filed against the same defendants for a ten year period. Discussion with the attorney may result in a narrowing of the time period. The attorney has agreed to give the Commission more time while he decides whether the time period can be narrowed.